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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,703	11/12/2003	Marlies Regiert	REGIERT ET AL-2	9249
25889	7590	09/25/2008	EXAMINER	
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			OLSON, ERIC	
			ART UNIT	PAPER NUMBER
			1623	
			MAIL DATE	DELIVERY MODE
			09/25/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/712,703	<b>Applicant(s)</b> REGIERT ET AL.	
	<b>Examiner</b> Eric S. Olson	<b>Art Unit</b> 1623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,9 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,9 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**Detailed Action**

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 6, 2008 has been entered.

This office action is a response to applicant's amendment and arguments submitted June 6, 2008 wherein claims 1 and 9 are amended and new claims 19-21 are introduced. This application claims priority to provisional application DE10253042.4 filed November 14, 2002.

Claims 1, 9, and 19-21 are pending in this application.

Claims 1, 9, and 19-21 as amended are examined on the merits herein.

Applicant's arguments, submitted June 6, 2008, with respect to the rejection of instant claim 1 under 35 USC 102(b) for being anticipated by Bruzzese et al., have been fully considered and found to be persuasive to remove the rejection as Bruzzese et al. does not disclose a composition containing 3:1 or 4:1 cyclodextrin:fatty acid complexes. Therefore the rejection is withdrawn.

Applicant's arguments, submitted June 6, 2008, with respect to the rejection of instant claims 1 and 9 under 35 USC 103(a) for being obvious over Bruzzese et al. in view of Schlenk et al. in view of Koulbanis et al., have been fully considered and found to be persuasive to remove the rejection as the cited prior art does not disclose a composition containing 3:1 or 4:1 cyclodextrin:fatty acid complexes or any reason to make said composition. Therefore the rejection is withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 9, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagu et al. (US patent 4438106, cited in PTO-892) in view of Koulbanis et al. (US patent 4393043, of record in previous action)

Wagu et al. discloses an inclusion compound of a polyunsaturated fatty acid guest molecule with a cyclodextrin. (column 2 lines 13-19) The resulting substance is colorless and odorless (column 2 lines 38-40) as opposed to uncomplexed polyunsaturated fatty acids such as those found in fish oil which have an unpleasant odor and quickly oxidize in air to peroxides and other decomposition products. (column 1 lines 41-59) In one example, an inclusion compound of ethyl docosahexaenoate in alpha-cyclodextrin is prepared which contains 7.6% by weight of ethyl

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docosahexaenoate included in the inclusion complex, (column 5 line 53 – column 6 line 9) which is a molar ratio of about 4:1 cyclodextrin:ethyl DHA. These complexes absorbed almost no oxygen compared to the free uncomplexed fatty acids, indicating that they were highly stable to air oxidation. (column 7 line 60 - column 8 line 22)

Wagu et al. does not disclose a cosmetic or dermatological composition comprising similar complexes of alpha-cyclodextrin with an omega-6 polyunsaturated fatty acid.

Koulbanis et. al. discloses the use of vitamin F for the preparation of cosmetics. (Column 1, Paragraph 1). Koulbanis et. al. discloses vitamin F as useful for the treatment of skin dryness. (Column 1, lines 27-30). Koulbanis et. al. further disclose that the use of vitamin F is limited by problems with oxidation. (Column 1, lines 30-35). Koulbanis further discloses several emulsions comprising vitamin F compounds and oil by mixing the ingredients. (Columns 5-6; Examples II-XII). Vitamin F typically includes polyunsaturated fatty acids including linoleic acid and arachidonic acid, both omega-6 fatty acids. (column 1 line 60 - column 2 line 41) Note that the preparation of a dispersion before the formation of an emulsion is considered a routine step within the capabilities of one skill in the art in the cosmetic art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to make a cosmetic or dermatological emulsion containing linoleic or arachidonic acid in a complex with 4 alpha-cyclodextrin molecules as described by Wagu et al. One of ordinary skill in the art would have been motivated to make this composition because Wagu et al. discloses that 1:4 complexation of polyunsaturated

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fatty acids in alpha-cyclodextrin solves the problem of oxidation stability, said problem having been recognized by Koulbanis et al. One of ordinary skill in the art would reasonably have expected success because of the great improvement in stability described by Wagu et al. for various different polyunsaturated fatty acids.

Therefore the invention taken as a whole is *prima facie* obvious.

### **Conclusion**

No claims are allowed in this application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric S. Olson whose telephone number is 571-272-9051. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia Anna Jiang can be reached on (571)272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric S Olson/  
Examiner, Art Unit 1623  
9/22/2008

/Shaojia Anna Jiang, Ph.D./  
Supervisory Patent Examiner, Art Unit 1623